

BRB Nos. 93-0957  
and 93-0957A

|                              |   |                    |
|------------------------------|---|--------------------|
| OPAL HAWKINS (Widow of       | ) |                    |
| LEWIS HAWKINS)               | ) |                    |
|                              | ) |                    |
| Claimant                     | ) |                    |
| Cross-Petitioner             | ) |                    |
|                              | ) |                    |
| v.                           | ) |                    |
|                              | ) |                    |
| INGALLS SHIPBUILDING,        | ) | DATE ISSUED:       |
| INCORPORATED                 | ) |                    |
|                              | ) |                    |
| Self-Insured                 | ) |                    |
| Employer-Respondent          | ) |                    |
| Cross-Respondent             | ) |                    |
|                              | ) |                    |
| DIRECTOR, OFFICE OF WORKERS' | ) |                    |
| COMPENSATION PROGRAMS,       | ) |                    |
| UNITED STATES DEPARTMENT     | ) |                    |
| OF LABOR                     | ) |                    |
|                              | ) |                    |
| Petitioner                   | ) | DECISION and ORDER |

Appeal of the Decision and Order on Motion for Reconsideration of G. Marvin Bober, Associate Chief Administrative Law Judge, United States Department of Labor.

John G. Jones and Susan McDonald (Cupit, Jones & Fairbanks), Jackson, Mississippi, for claimant.

Mark Reinhalter (J. Davitt McAteer, Acting Solicitor of Labor; Carol DeDeo, Associate Solicitor; Janet R. Dunlop, Counsel for Longshore), Washington, D.C., for the Director, Office of Workers' Compensation Programs, United States Department of Labor.

Before: HALL, Chief Administrative Appeals Judge, BROWN and DOLDER, Administrative Appeals Judges.

PER CURIAM:

The Director, Office of Workers' Compensation Programs (the Director), appeals and claimant cross-appeals the Decision and Order on Motion for Reconsideration (91-LHC-995) of Associate Chief Administrative Law Judge G. Marvin Bober rendered on a claim filed pursuant to the provisions of the Longshore and Harbor Workers' Compensation Act, as amended, 33 U.S.C. §901 *et seq.* (the Act). We must affirm the findings of fact and conclusions of law of the administrative law judge if they are rational, supported by substantial evidence, and in accordance with law. *O'Keeffe v. Smith, Hinchman & Grylls Associates, Inc.*, 380 U.S. 359 (1965); 33 U.S.C. §921(b)(3).

The sole issue raised by these appeals is whether the administrative law judge erred in denying the Director's Motion for Reconsideration of the administrative law judge's Decision and Order as untimely filed. Employer has not responded to these appeals.

Claimant's husband (decedent) filed a claim for compensation under the Act. On October 27, 1992, the administrative law judge issued a Decision and Order granting employer's motion to dismiss the claim pursuant to Section 33(g)(1) of the Act, 33 U.S.C. §933(g)(1), in accordance with the decision of the United States Supreme Court in *Estate of Cowart v. Nicklos Drilling Co.*, 505 U.S. 469, 26 BRBS 49 (CRT)(1992). The Certificate of Filing and Service attached to the administrative law judge's Decision and Order indicates that it was filed by the Office of the District Director on November 18, 1992, and that copies of the administrative law judge's Decision and Order were mailed on that date to the parties and their representatives. On November 30, 1992, the Director submitted by mail a Motion for Reconsideration and to Reopen Record for Admission of Additional Evidence to the administrative law judge. In a Decision and Order on Motion for Reconsideration, the administrative law judge denied the Director's motion as untimely filed based upon a determination that his Decision and Order was "filed" as of the date it was received by the Office of the District Director. Specifically, the administrative law judge determined that inasmuch as his Decision and Order was "dated and served" by the Office of Administrative Law Judges on the Office of the District Director on October 27, 1992, in order to be timely the Director's motion for reconsideration had to be filed no later than ten days from that date, November 6, 1992. Thus, the administrative law judge found the Director's motion, mailed on November 30, 1992 and received by the Office of Administrative Law Judges on December 21, 1992, to be untimely. *See* Decision and Order on Motion for Reconsideration at 4.

On appeal, the Director and claimant contend that the Director's motion for reconsideration was timely filed with the administrative law judge since it was mailed within ten days of the date that the district director certified that the administrative law judge's Decision and Order was filed in the Office of the District Director. We agree. The precise issue raised in the instant case was recently addressed by the Board in *Hamilton v. Ingalls Shipbuilding, Inc.*, 30 BRBS 84 (1996). In *Hamilton*, the Board held that the ten-day period for requesting reconsideration of an administrative law judge's decision commences on the date the district director certifies that he filed the administrative law judge's decision. *See* 33 U.S.C. §§919; 921(a); 20 C.F.R. §§702.349, 702.350,

802.206. In the instant case, the district director certified that the administrative law judge's Decision and Order was filed on November 18, 1992. Because the last day of the ten-day period for filing a motion for reconsideration fell on a Saturday, the period for filing a timely motion for reconsideration ran until Monday, November 30, 1992. *See* 20 C.F.R. §802.221(a). The regulations further provide that a motion for reconsideration will be considered filed as of the date of mailing where the date of delivery would result in the motion's being untimely. 20 C.F.R. §802.206(c). The certificate of service attached to the Director's motion for reconsideration indicates that it was mailed on November 30, 1992. Thus, for the reasons stated in *Hamilton*, we hold that the Director's motion for reconsideration was timely filed.

Accordingly, the Decision and Order on Motion for Reconsideration of the administrative law judge denying the motion as untimely is reversed, and the case is remanded to the administrative law judge for consideration of the merits of the Director's motion.

SO ORDERED.

BETTY JEAN HALL, Chief  
Administrative Appeals Judge

JAMES F. BROWN  
Administrative Appeals Judge

NANCY S. DOLDER  
Administrative Appeals Judge